

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DALE ARNOLD,
Petitioner

v.

FREDERICK FRANK,
BRADFORD COUNTY DISTRICT
ATTORNEY and ATTORNEY GENERAL
OF THE COMMONWEALTH OF
PENNSYLVANIA,
Respondents

Civil No. 1:00-CV-0775

Judge Yvette Kane

FILED
HARRISBURG, PA
OCT 23 2002

MARY E. D'ANIELA,
Per *[Signature]* Deputy Clerk

**PETITIONER'S APPLICATION FOR
CERTIFICATE OF APPEALABILITY**

AND NOW comes the petitioner, Dale Arnold, by his attorney Daniel I. Siegel of the Federal Public Defender's Office, and pursuant to 28 U.S.C. § 2253(c), files this Application for Certificate of Appealability.

1. By order dated October 11, 2002, the District Court denied defendant's petition for writ of habeas corpus under 28 U.S.C. § 2254.
2. Petitioner's notice of appeal must be filed on or before Tuesday, November 12, 2002.

3. Pursuant to 28 U.S.C. § 2253(c)(1), petitioner must seek a certificate of appealability from the District Court judge.
4. Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.”
5. In order to meet the certificate of appealability standard, petitioner must demonstrate that reasonable jurists would find the District Court’s assessment of the constitutional claims to be either debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 1604 (2000).
6. Applying a reasonable jurist standard, petitioner seeks a certificate of appealability on Claim Three, wherein he argues that trial counsel was ineffective in failing to object to trial testimony by psychologist Mary Louise Marley.
7. At trial, Ms. Marley was called by the Commonwealth in support of testimony by Jane Moran, the victim of the kidnaping and rape for which petitioner was convicted.

8. The psychologist testified, without objection from defense counsel, that she had conducted four sessions of hypnotherapy with the victim, and that the results of those sessions reflected that the victim was telling the truth regarding the kidnaping.

9. Although the District Court denied relief on this claim, it is submitted that reasonable jurists might have issued a contrary ruling.

10. The psychologist's testimony was inadmissible under then-controlling constitutional principles.

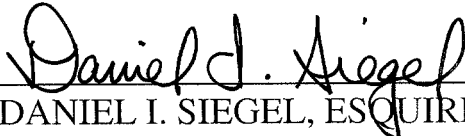
11. As stated by the Supreme Court in United States v. Bailey, 444 U.S. 394, 415, 100 S.Ct. 624, 636 (1980), "[t]he Anglo-Saxon tradition of criminal justice, embodied in the United States Constitution and in federal statutes, makes jurors the judges of the credibility of testimony offered by witnesses."

12. Consistent with this constitutional principle, it is "axiomatic that the expert may not go so far as to usurp the exclusive function of the jury to weigh the evidence and determine credibility." United States v. Willis, 322 F.2d 548, 551 (3rd Cir. 1963), citing United States v. Ward, 169 F.2d 460 (3rd Cir. 1948).

WHEREFORE, it is respectfully requested that a certificate of appealability be issued on the claim that trial counsel rendered ineffective assistance in failing to object to the testimony of psychologist Mary Louise Marley.

Respectfully submitted,

Date: Oct. 23, 2002


DANIEL I. SIEGEL, ESQUIRE
Federal Public Defender
100 Chestnut Street, Suite 306
Harrisburg, PA 17101
Attorney for Dale Arnold
Attorney ID # 38910

CERTIFICATE OF NON-CONCURRENCE

I, Daniel I. Siegel, of the Federal Public Defender's Office certify that on October 23, 2002, I contacted District Attorney Stephen G. Downs who stated that he would not concur in the Application for Certificate of Appealability.

Date: Oct. 23, 2002

Daniel I. Siegel
DANIEL I. SIEGEL, ESQUIRE
Asst. Federal Public Defender

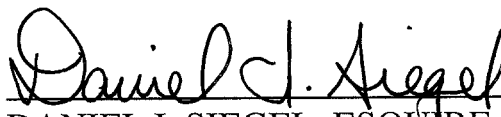
CERTIFICATE OF SERVICE

I, Daniel I. Siegel, of the Federal Public Defender's Office do hereby certify that on this date I served a copy of Petitioner's Application for Certificate of Appealability by placing the same in the United States mail, first class in Harrisburg, Pennsylvania addressed to the following:

Stephen G. Downs, Esquire
District Attorney
Bradford County Courthouse
301 Main Street
Towanda, PA 18848

Dale Arnold
Inmate #AK 5044
SCI Huntingdon
1100 Pike Street
Huntingdon, PA 16654-1112

Date: Oct. 23, 2002


DANIEL I. SIEGEL, ESQUIRE
Asst. Federal Public Defender
Attorney for Dale Arnold